

**TITLE 7, CHAPTER 3:
A CAFETERIA-STYLE APPROACH TO LOCAL GOVERNMENT**

Prepared for the
Education and Local Government Committee

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INTRODUCTION

Although there are numerous governmental entities with which Montana citizens interact on a regular basis, it is county and municipal governments that have the greatest impact on people's lives. It is those governments that supply us with water and sewer services, pick up our garbage, collect our taxes, conduct our elections, provide police and fire protection, operate our libraries, and plow our streets. The elected officials of our county and municipal governments are our neighbors. We go to church with them, we see them in the grocery store, their children play soccer with our children. If we see a problem in our community, we can pick up the phone and call our local official to complain or to offer a solution. In other words, local government is the government that we are most familiar with, the government on which we can have the greatest influence.

In Montana, we can even choose the form of our local government. Title 7, chapter 3, of the Montana Code Annotated offers numerous optional forms from which Montana citizens can choose their type of local government. But it wasn't always this way. This "cafeteria-style" approach to local government came about through the adoption of a new state constitution in 1972. Prior to that time, Montana local governments reflected traditional forms.

WHAT WAS LOCAL GOVERNMENT LIKE PRIOR TO 1972?

Counties are generally considered to be subdivisions of the state. The purpose for the existence of a county is to administer state programs at the local level; e.g., public assistance, tax collection, elections. A county's sole function, then, is administrative and not legislative. As a result, counties lack the authority to adopt ordinances. The traditional county governmental structure in Montana was inherited from other states. When Montana became a territory in 1864, territorial legislators adopted a county governmental structure that was familiar: a three-member board of commissioners and a long list of other county officials, all popularly elected. The historical purpose behind such an arrangement was to keep local government accountable to the people and to prevent any one official from acquiring too much power. When Montana adopted its first state constitution in 1889, this territorial system of county government was embedded into constitutional law. Municipalities are often considered true local governments. A municipality is formed by residents to provide a level of governance and services to a defined area of relatively high population density. A municipality, unlike a county, has ordinance-making powers.

Article XVI of the 1889 Constitution dealt with counties and municipalities. Counties received the greatest attention, while municipalities received only passing mention. The statutes that implemented the constitutional provisions, however, established the form of government to be used by municipalities. Every municipality had to be divided into wards; the number of wards depended upon the municipality's classification. (Classification is based on population.) Each municipality then elected two aldermen from each ward and one mayor. The number of other elected or appointed municipal officials depended on the municipality's classification. In 1911, the Legislature allowed municipalities to reorganize under a commission form of government: popularly elected mayor and councilmen, with the councilmen elected at-large and not by wards. Six years later, the Legislature established an additional form of government for municipalities: commission-manager.

In 1922, the Constitution was amended to allow the Legislature to provide alternative forms of local government, including consolidation, even though two alternative forms already were statutorily available for municipalities. The Legislature responded to the amendment by passing city-county consolidation legislation in 1923 and county manager legislation in 1931. However, counties and municipalities generally failed to take advantage of these alternative possibilities. By 1972, only two municipalities had adopted the commission-manager form of government, only one county had a county manager, and there were no city-county consolidations.

HOW DID THE 1972 CONSTITUTION AFFECT LOCAL GOVERNMENTS?

The local government article in the 1972 Constitution gave citizens greater discretion in designing local government structures by directing the Legislature to provide optional or alternative forms of government. The Legislature was also directed to provide procedures by which a local government unit could adopt a self-government charter. In addition, self-government powers could be extended to other local governments that adopted one of the optional forms provided by the Legislature.

This extension of self-government powers was a tremendous leap of faith by the constitutional framers. Historically, counties and municipalities had general government powers only. This meant that a county or municipality had only those powers granted to it by the Legislature. In addition, when there was any doubt as to the power of a county or a municipality to provide a service or regulate an activity, the courts applied a narrow interpretation of local government power and ruled against the local government.

The 1972 Constitution provides that a local government with self-government powers has all powers not specifically denied by the Constitution, statute, or local charter. In

addition, all local government powers, whether general or self-government, are to be liberally construed. This means that in cases in which the power of a local government is in doubt, the courts are instructed to conclude that the power does reside in the local government.

WHAT ALTERNATIVE FORMS OF GOVERNMENT ARE CURRENTLY AVAILABLE?

Montana law currently provides five basic optional forms of government in addition to the two traditional forms for a county and a municipality. With a single exception, any of the optional forms may be adopted by the voters of either a county or a municipality during the voter review process or by voter initiative. The single exception is the town meeting form, which is available only to municipalities of less than 2,000 people. The five basic optional forms are the commission-executive, commission-manager, commission, commission-chairman, and town meeting. Each form can be even further differentiated by the adoption of one or more of the following structural options:

- < partisan or nonpartisan elections;
- < term of office;
- < presiding officer of legislative body;
- < concurrent or overlapping terms of office;
- < budget authority, appointment authority, and veto power of chief executive;
- < appointment of administrative assistants;
- < selection process of chief administrative officials;
- < district or at-large commissioner elections;
- < size of legislative body;
- < use of community councils to advise legislative body; and

- < general government or self-government powers (not available with commission form).

Counties and municipalities also have the option of forming a consolidated government or adopting a charter form of government. Consolidation occurs when a county and a municipality within the county unite to form a single unit of local government. Montana statutes provide two options for effecting a consolidation. Option One allows for consolidation by means of a recommendation by the study commissions of the local government units within the proposed consolidation area during the voter review process and approval by the voters in the affected area. Under Option One, the voters can adopt any one of the five basic optional forms or a self-government charter. Under Option Two, consolidation can be proposed by voter initiative requesting that the question of consolidation be submitted to the voters. If approved by the voters, the commission-manager form of government is automatically adopted. In addition, under Option Two, the departmental structure of the consolidated government is statutorily specified.

The final form of government available to counties and municipalities is the charter government. A charter government is established by a written charter that defines the structure, powers, privileges, rights, and duties of the local government unit and the limitations on the government. The charter provisions establish the executive, legislative, and administrative structure and organization of the local government unit. A charter form of government has self-government powers.

WHAT FORMS OF GOVERNMENT ARE CURRENTLY IN USE IN MONTANA?

Of the 56 counties in Montana, 52 operate under the traditional commission form of government. One county (Petroleum) has adopted a commission-manager form of

government. These 53 counties exercise general government powers. One county (Fergus) has adopted a charter government and selected the commission form. Two counties (Deer Lodge and Silver Bow) have consolidated with municipalities and adopted charter governments. Both Butte-Silver Bow and Anaconda-Deer Lodge have selected the commission-executive form of government. Fergus and the two consolidated governments exercise self-government powers.

Of the 126 municipalities in Montana, 92 have a commission-executive form of government, exercising general government powers; nine have a commission-executive form, exercising self-government powers; four have a commission-manager form, exercising general powers; and two have a commission-chairman form, exercising self-government powers. Nineteen municipalities have adopted a charter government, exercising self-government powers. Of these 19, 12 have a commission-executive form, six have a commission-manager form, and one (Pinesdale in Ravalli County) has a town meeting form.

HOW CAN CITIZENS CHANGE THEIR FORM OF GOVERNMENT?

There are two ways to alter the existing form of a local government unit. The first is by voter petition. The petition must be signed by 15% of the registered voters of the local government unit and presented to the governing body. The petition must include, among other things, the proposed new form of government or the proposed amendments to the existing form and information supporting both the adoption of the proposed changes and the retention of the existing form. Upon receipt of the petition, the governing body must call an election on the proposed changes. The election must be held in conjunction with the next regular or primary election that is at least 75 days after the call.

The second way to alter the existing form of a local government unit is through local voter review. Every 10 years, each local government unit in Montana must hold an election on the question of conducting a local government review. If the question is approved, then a second election is held to establish a study commission that will conduct the actual review. A commission candidate must be a registered voter of the local government unit but may not be an elected official of the local government. A study commission can:

recommend amendments to the existing form of government;

- < recommend any form of government authorized in statute;
- < draft a charter;
- < recommend consolidation or amendments to an existing consolidation;
- < recommend a county merger;
- < recommend disincorporation of an existing municipality; or
- < submit no recommendation.

If the study commission recommends an alternative form of government or changes to an existing government, the recommendation must be submitted to the voters.

There have been three voter review cycles since the adoption of the 1972 Constitution. The following table shows the results.

VOTER REVIEW CYCLE	# OF STUDY COMMISSIONS	# OF BALLOT PROPOSALS	# OF BALLOT ADOPTIONS
1974-76	182	173	31
1984-86	98	37	16
1994-96	112	53	22
TOTAL	392	263	69

CONCLUSION

Montana's "cafeteria-style" approach to local government allows citizens wide discretion in designing and empowering local governments. Citizens can design a government that meets the needs of their local community and enhances the local government's autonomy. Montana voters have used this power to alter their local governments in a very judicious manner. There is no reason to believe that in the future, voters will act any differently.

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